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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,606	12/05/2003	Allen C. Thompson	10030636-1	2898

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AGILENT TECHNOLOGIES INC.  
INTELLECTUAL PROPERTY ADMINISTRATION, LEGAL DEPT,  
M/S DU404  
P.O. BOX 7599  
LOVELAND, CO 80537-0599

EXAMINER

RAMILLANO, LORE JANET

ART UNIT PAPER NUMBER

1743

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/729,606		THOMPSON ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Lore Ramillano		1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 and 31-33 is/are pending in the application.
- 4a) Of the above claim(s) 20-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 31-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. In applicant's amendment filed on 5/12/06, applicant amended claims 1, 17, and 31. Claims 20-30 remain withdrawn from further prosecution since applicant elected claims 1-19 and 31-33 in the reply filed on 12/22/05. Claims 1-19 and 31-33 are pending in the application.

### **Response to Amendment**

2. The rejection of claims 1-19 and 31-33 under 35 U.S.C. 112, first paragraph, is withdrawn.

3. The rejection of claims 1-19 and 31-33 under 35 U.S.C. 112, second paragraph, is maintained because applicant's amendment of claims 1, 17, and 31 fail to clarify the claim language in these claims. It is still unclear, based on the amendment of claims 1, 17, and 31 whether applicant intends to claim the "array assembly" and "backing element" as essential elements of the claimed invention.

4. Rejection over the prior art under 35 U.S.C. 102(b) is also maintained.

### **Claim Rejections - 35 USC § 102**

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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6. **Claims 1-8, 14-19, and 31-33** are rejected under 35 U.S.C. 102(b) as being anticipated by Freeman (US 5958760).

In Figures 13a and 13b, Freeman discloses a device (Figs. 13a and 13b) comprising a base (114); a cover (128); an array assembly (116); a backing element (6); a clamping member (124); spacers (118); a hardstop (115); and a screw stop (126). In Figures 15a and 15b, Freeman discloses a device with spring elements (212 and 214).

Freeman further discloses that the force from the clamping member is dissipated over a greater area of the of the array assembly, which creates a capillary gap between the array assembly and backing element (Figures 13a and 13b, column 11, 55-65). Additionally, the travel of the base and cover are limited when are the sealed together by the clamping member (column 3, lines 3-29).

7. **Claims 1, 9-13, 14-19, and 31-33** are rejected under 35 U.S.C. 102(e) as being anticipated by Shea et al. ("Shea," US Pub. No. 20030235906).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Figs. 7A-7D, Shea disclose various compression devices (30), which comprise a base (34), a cover (32), a clamping member (35), an array assembly (array substrate),

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and a backing element. Shea further disclose that the compression device is configured to apply a compression force by the actuation of cam lever (35) [0079]-[0082].

Shea also disclose that the compression device (30) is configured to limit the travel of at least the base and the cover when they are operatively held together by tabs (hardstop) for limiting travel [0079]-[0082].

### **Response to Arguments**

8. **Rejection of claims 1-8, 14-19, and 31-33 under 35 U.S.C. 102(b) as being anticipated by Freeman**

Applicant's arguments with regard to the rejection of claims 1-8, 14-19, and 31-33 under 35 U.S.C. 102(b) as being anticipated by Freeman have been fully considered but they are not persuasive.

Applicant argues that Freeman does not teach a clamping member that is configured for being operatively actuated in a manner sufficient to deflect an array assembly and a backing element in substantially the same curvature. Examiner disagrees with applicant's argument because the amended language does not overcome the teachings of Freeman since applicant's amended language is not distinguishable from the prior art in terms of structure rather than function. Examiner further notes that because the amended claims consist of functional language, the only structural limitations defined in the amended claims 1, 17, and 31, which will be given patentable weight, are "a device comprising a base; a cover; and a clamping member for holding said cover to said base." Thus, examiner suggests that the applicant should

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specifically recite what is to be claimed in claims 1, 17, and 31, to give the functional language patentable weight.

Therefore, Freeman does anticipate claims 1-8, 14-19, and 31-33, under 35 U.S.C. 102(b).

9. Rejection of claims 9-13 under 35 U.S.C. 103(a) as being unpatentable over Freeman in view of Shea

Applicant's arguments with regard to the rejection of claims 9-13 under 35 U.S.C. 103(a) as being unpatentable over Freeman in view of Shea have been fully considered and are persuasive. Therefore, the rejection is withdrawn.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lore Ramillano whose telephone number is (571) 272-7420. The examiner can normally be reached on Mon. to Fri., 10am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lore Ramillano  
Examiner  
Art Unit 1743

7/18/06

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700